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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANNY CHARLES BOWMAN, JASON THOMAS BOWMAN, DAVID MIKE LEWIS, and RICHARD KIM PAISLEY

Appeal 2012-010623
Application 09/737,185
Technology Center 1700

Before ADRIENE LEPIANE HANLON, CATHERINE Q. TIMM, and JEFFREY B. ROBERTSON, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision to reject claims 1-21, 38, and 40-49. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Appellants' invention relates to information management using radio frequency identification (RFID) tags on biomedical specimen collection vessels (Spec. 5:16 to 6:3).

It is common practice to collect a blood or urine specimen from a patient at a site such as a doctor's office remote from the laboratory at which the diagnostic or toxicology testing will be performed (Spec. 1:5-8). Conventionally, the information needed by the laboratory to complete the testing and relay the results back to the collection site was conveyed using paper forms including barcodes that correspond to barcodes on the specimen containers (Spec. 2:1-15). A copy of the paper form and the container has to be maintained together, e.g., in boxes or sleeves, for transport to the laboratory (*id.*).

Instead of using a paper form, Appellants encode the necessary information in an electronic memory tag affixed onto the specimen collection container (Spec. 4:18-23). Specifically, Appellants describe the use of known Radio Frequency Identification (RFID) systems featuring so-called "smart tags" or "smart labels" that are affixed to the specimen collection containers and provided to the specimen collection facility, e.g., doctor's office, clinic, or hospital (Spec. 4:23 to 5:13). While such tags were known in the art for other applications, Appellants state that such tags have not been used in connection with diagnostic or toxicology collection containers (Spec. 5:1-14).

Appellants claim their invention in a variety of ways. For instance, claim 38 is directed to a toxicology specimen system including a collection vessel, a wireless electronic memory tag attached to the vessel, and a

tamper-indicating seal. Other claims are directed to systems with a plurality of tagged specimen collection vessels distributed amongst a vessel distribution facility, a specimen collection facility, and specimen testing laboratory facility, and also located in transport between the facilities (*see* Claims 1, 8, 9, 17, 42, and 43). Claim 49 is directed to the distributed tagged vessels as a plurality of biomedical specimen collection vessels at various facilities. Appellants further claim a method for electronically storing data on a tagged specimen vessel and remotely reading data from the vessel (Claim 18), and a method for recording information about a diagnostic or toxicology specimen on a diagnostic or toxicology specimen vessel (Claims 19 and 44),

The Examiner maintains the following reviewable[1] rejections[2]:

A. The rejection of claims 1-17, 40-42, and 44-49 under 35 U.S.C. § 112 ¶ 1 as failing to comply with the written description requirement.

B. The rejection of claims 1-21, 38, and 40-49 under 35 U.S.C. § 112, ¶ 2 as indefinite.

C. The rejection of claims 1-4, 6, 7, 9-12, 14, 15, 19, 21, 38, 40, and 41 under 35 U.S.C. § 102(e) as anticipated by Petrick[3].

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[1] The issue regarding claim duplicates listed as Rejection A in Appellants' list of Grounds to be Reviewed on Appeal on page 21 of the Brief was not a rejection at all, but an advisory objection that we do not have jurisdiction to review (*see* Oct. 11, 2011 Office Action; Ans. 18). Therefore, we do not review it.

[2] The Examiner has withdrawn the rejection of claims 1-21, 38, and 40-49 under 35 U.S.C. § 112, ¶ 1 as failing to comply with the written description requirement, regarding the electronic memory tag (Ans. 2).

[3] Petrick, US 6,535,129 B1 patented Mar. 18, 2003.

D. The rejection of claims 1, 6, 7, 9, 14, 15, 19, 21, 40, and 41 under 35 U.S.C. § 102(b) as anticipated by Berney[4].

E. The rejection of claims 5, 8, 13, and 18 under 35 U.S.C. § 103(a) over Petrick or Berney in view of Leuenberger[5].

F. The rejection of 16, 17, 20, and 42-44 under 35 U.S.C. §103(a) over Petrick or Berney in view of Hoffman[6] or Fukuzaki[7].

G. The rejection of claims 2 and 10 under 35 U.S.C. § 103(a) over Berney in view of RD 421048[8].

H. The rejection of claims 3, 4, 11, and 12 under 35 U.S.C. § 103(a) over Berney in view of Stevens[9].

I. The rejection of claim 38 under 35 U.S.C. § 103(a) over Berney in view of Bowman[10].

J. The rejection of claim 8 under 35 U.S.C. § 103(a) over Berney in view of RD 421048, Stevens, and Leuenberger.

K. The rejection of claim 17 under 35 U.S.C. § 103(a) over Berney in view of Stevens, and Leuenberger, and further in view of Hoffman or Fukuzaki.

L. The rejection of claims 1-4, 6, 7, 9-12, 14, 15, 19, 21, 38, 40, 41, and 45-49 under 35 U.S.C. § 103(a) as obvious over Stevens in view of Moore[11].

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[4] Berney, US 5,777,303 patented Jul. 7, 1998.
[5] Leuenberger, US 5,314,421 patented May 24, 1994.
[6] Hoffman et al., US 5,613,012 patented Mar. 18, 1997.
[7] Fukuzaki, US 5,948,103 patented Sep. 7, 1999.
[8] Anonymous, Research Disclosure 421048 A, pub. May 1999.
[9] Stevens et al., EP 1 004 359 A2, pub. May 31, 2000.
[10] Bowman, US 5,135,313 patented Aug. 4, 1992.

M. The rejection of claims 5, 8, 13, and 18 under 35 U.S.C. § 103(a) as obvious over Stevens and Moore further in view of Leuenberger.

N. The rejection of claims 16, 17, 20, and 42-44 under 35 U.S.C. § 103(a) as obvious over Stevens and Moore further in view of Hoffman or Fukuzaki.

We address each of these rejections below.

OPINION

REJECTION A

The Examiner rejects claims 1-17, 40-42, and 44-49 as lacking written descriptive support. All of the rejected claims require *a plurality of specimen collection vessels*, with at least some members of the plurality located at a *vessel distribution facility*, a collection facility, and a specimen testing laboratory facility. The Examiner finds that there is no support in the original Specification for distributing a plurality of vessels among the several facilities (Ans.[12] 2-3 and 18).

Appellants contend that those of ordinary skill in the art would understand that the Specification discloses a plurality of vessels which are transported and used in the manner claimed, citing page 6, lines 24 to page 10, line 7 of the Specification (Br.[13] 24-25).

As Appellants do not argue any claim apart from the others, we select claim 1 as representative for resolving the issue on appeal.

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[11] Moore, Barcodes, 2D or RFID? Dec. 1999 accessed at www.parcelindustry.com.
[12] All references to the Answer (Ans.) are to the Answer filed June 6, 2012.
[13] All references to the Brief (Br.) are to the Brief filed April 11, 2012.

Claim 1 reads as follows:

> 1. A diagnostic specimen system comprising a plurality of biomedical specimen collection vessels, at least some members of the plurality being located at a vessel distribution facility, other members of the plurality being located at a specimen collection facility, further members of the plurality being located at a specimen testing laboratory facility, and additional members of the plurality being transported between the facilities,
>
> wherein each of the collection vessels includes a wireless electronic memory tag, a unique electronic identification code stored on the electronic memory tag for non-contact storage and retrieval of information directly attached thereto such that the tag remains directly attached to the vessel at the facilities and as the vessel is transported between facilities.

(Claims App. at Br. 62.)

We find that a preponderance of the evidence supports the Examiner's finding of lack of written descriptive support. The relevant facts are as follows.

The Specification states that specimen containers are supplied to multiple specimen collection sites (Spec. 12:24 to 13:1). The specimen collection sites are locations such as hospitals, clinics, and doctors' offices (Spec. 13:1). At the collection sites, the containers are used to collect specimens from donors (Spec. 8:21-22). The collected specimens are said to be delivered by a courier to a laboratory from the multiple collection sites (Spec. 14:15-16).

The Specification discloses that containers having encoded memory tags are "provided," but the Specification does not state from where the containers are provided (Spec. 8:16-18; 12:17 to 13:1).

The Specification does not disclose that the containers are provided from a vessel distribution facility (Spec., generally). In fact, the Specification nowhere uses the word "facility."

Because Appellants do not use the word "facility" in their Specification, we give the word its broadest ordinary meaning consistent with the Specification. The most applicable ordinary meaning from dictionary.com is: "(a) something designed, built, installed, etc., to serve a specific function affording a convenience or service: *transportation facilities; educational facilities; a new research facility*."

The Specification uses the word "site" instead of facility. The most appropriate definitions for "site" provided by dictionary.com are "(1) the position or location of a town, building, etc., especially as to its environment: *the site of our summer cabin*;" or "the area or exact plot of ground on which anything is, has been, or is to be located: *the site of ancient Troy*."

The test for sufficiency of a written description is "whether the disclosure clearly 'allow[s] persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.' " *Ariad Pharms., Inc. v. Eli Lilly & Co.,* 598 F.3d 1336, 1351 (Fed.Cir.2010) (en banc) (quoting *Vas–Cath Inc. v. Mahurkar,* 935 F.2d 1555, 1562–63 (Fed.Cir.1991)). The disclosure must "reasonably convey[ ] to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date." *Id.* at 1351. Possession means "possession as shown in the disclosure" and "requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art." *Id.*

One of ordinary skill in the art would have, based upon the ordinary meaning of the term "facility," understood a "distribution facility" to be something designed, built, installed, etc. to serve the function of distributing the specimen collection vessels. Given that the Specification merely states that the containers "are provided" without stating from where, we agree with the Examiner that Appellants' written description does not adequately convey that they were in possession of a system or method including a distribution facility that is built, designed, installed, etc. to accomplish the act of distributing the tagged specimen collection vessels. There are several options for providing tagged specimen vessels, and Appellants do not reasonably convey from which type of site the vessels are provided. For instance, the tagged vessels could be assembled or otherwise "provided" at the site of specimen collection or at some other site not specifically designed, built, installed for distributing such tagged vessels.

We sustain the rejection of claims 1-17, 40-42, and 44-49 under 35 U.S.C. § 112, ¶ 1.

REJECTION B

The Examiner rejects claims 1-21, 38, and 40-49 under 35 U.S.C. § 112, ¶ 2 as indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention on the following grounds:

1. The recitation requiring a plurality of specimen collection vessels, at least some members of the plurality being located at a vessel distribution facility, others being located at a specimen collection facility, others being located at a specimen testing laboratory

facility is unclear and indefinite (Ans. 4). This language is, for instance, found in claim 1.

2. It is not clear what "directly attached" means in the recitation requiring a wireless electronic memory tag that "remains directly attached to the vessel." (Ans. 4.) This "directly attached" language is found in, for instance, claim 1.
3. In claims 4 and 12, it is not clear whether the label is the same label that includes the electronic memory device, as disclosed in the Specification (Ans. 6).
4. From claims 6, 7, 14, and 15, it is not apparent whether the vessel contains a specimen (Ans. 6).
5. From claim 38, it is not clear where "a tamper-indicating seal" is located on the vessel (Ans. 6). According to the Examiner, this is an essential structural relation omitted from the claim (*id.*).
6. In claim 40, the meaning of "an electronic database accessible from the specimen collection facility for storing data entered at the collection facility" is unclear (Ans. 6).

With regard to the first basis for the indefiniteness rejection, the Examiner's reasoning is as follows:

> First, the claim language is not supported by the specification, and it is not apparent, how this system is formed. Is this a permanent system, or is this a changing system? Are these vessels constantly located at the indicated facilities? Are the vessels located at recited facilities different from each other? Moreover, since the vessels are supposed to contain samples, would it be vessels with the same partitioned sample distributed among all facilities? The language renders the claims unclear and indefinite.

(Ans. 4.)

"A claim is considered indefinite if it does not reasonably apprise those skilled in the art of its scope." *IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377, 1383-84 (Fed. Cir. 2005). In considering the question of indefiniteness, an examiner must consider the meaning of the claim terms in light of the specification as those terms would be interpreted by one of ordinary skill in the art. *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971).

While we agree with the Examiner that the claimed concept of a system including specimen collection vessels located at a vessel distribution facility lacks written descriptive support in the Specification, we determine that the Examiner has failed to establish that reading the claims in light of the Specification would not reasonably apprise the ordinary artisan of their scope.

The Specification discloses (1) providing the tagged vessels to multiple specimen collection sites such as doctor's offices, clinics, and hospitals; (2) collecting the specimens and placing them in the vessels; (3) alerting a courier that the specimens are ready for pick up; and (4) delivering the specimen vessels to the laboratory for testing the specimens (Spec. 8-9). The Specification provides the necessary context for understanding how the tagged vessels move from one location to another such that they end up in the locations claimed.

Appellants have chosen to claim their invention in terms of a group of articles, i.e., specimen collection vessels with smart labels, whose members are located in some snapshot in time at various facilities and between facilities. The Specification reasonably conveys that the specimen collection

facility is a facility such as a hospital, clinic, or doctor's office at which the specimen is collected. The Specification also reasonably conveys that the specimen testing laboratory facility is a facility at which the collected specimen within the container is tested. The Specification does not convey a meaning for vessel distribution facility. However, from the plain meaning of its words, it is reasonable to interpret those words as identifying a facility (something designed, built, installed, etc. to serve a specific function) for distributing specimen collection vessels having wireless electronic memory tags, e.g., smart labels). Therefore, we cannot say that the Examiner has established that the claims are indefinite.

Appellants do not respond to the other bases for the Examiner's rejection (Bases 2-6 listed above). Because Appellants have not identified an error on the part of the Examiner as to these bases for rejection, we sustain these rejections.

REJECTION C

The Examiner rejects claims 1-4, 6, 7, 9-12, 14, 15, 19, 21, 38, 40, and 41 under 35 U.S.C. § 102(e) as anticipated by Petrick (Ans. 6).

There is no dispute on this record that Petrick describes what is claimed. Rather, the dispute involves the question of whether the claims of Petrick and, particularly, Petrick's claim 7, are directed to the same subject matter as Appellants' claims such that Appellants' Bowman and Lewis Declarations, proffered to establish that Appellants invented the claimed subject matter before it was disclosed in Petrick, can use used to overcome the rejection over Petrick (Br. 30; *see also* Bowman and Lewis Decls. in the Evid. App. of Br.).

The Examiner determines that Appellants' claims and Petrick's claims are not patentably distinct from each other and, therefore, the Declarations cannot be used to swear behind the filing date of Petrick (Ans. 19-20).

Appellants respond that Petrick is not directed to the same patentable invention as their claims (Br. 31-33). Appellants argue system claims 1-17 and 40-43 separately from method claims 18-21 and 44.

SYSTEM CLAIMS

Appellants' argument that Petrick's claim 7 is not directed to the same invention as their system claims is based upon a comparison of Petrick's claim 7 with Appellants' claim 1 (Br. 33-34). Petrick, according to Appellants, does not claim any vessels with identification devices directly attached thereto that are located at a vessel distribution facility (Br. 34).

We select claim 1 as representative for resolving the issue on appeal. We note that claim 38 does not contain the limitation Appellants' argue. Therefore, we consider claim 38 separately.

Claim 1

The issue is: Have Appellants identified an error in the Examiner's determination that Appellants' claim 1 is directed to the same invention or an obvious variant of the invention of Petrick's claim 7?

We answer in the affirmative.

Petrick's claim 7 is directed to the business form of claim 1. The business form of Petrick's claim 1 includes a first portion providing chain of custody information, a second portion linking the form with at least one specimen, and a wireless identification device associated therewith. Claim 7

recites that the wireless identification device detailed in claim 1 is adhered directly to the specimen or to a container *containing the specimen*.

While Petrick's business form containing the RFID chip is adhered to the container, the container already contains the specimen. A review of Petrick's written description verifies that the specimen is already within the container when the RFID chip is affixed to the container in accordance with claim 7. Petrick explains that a seal is affixed to a sample 100 into which RFID chip 106 has been embedded (Petrick, col. 5, ll. 5-6). This seal is a label that prevents tampering of the sample inside the container (Petrick, col. 5, ll. 24-31).

The Examiner reasons that "as soon as the business form with the RFID chip becomes attached to the vessel, the place where it is attached becomes [the] vessel distribution facility." (Ans. 21.) However, the "vessel distribution facility" cannot be said to be the same as the place where the chip is attached unless there is evidence that the place where the chip is attached is "designed, built, installed, etc." for the specific function of distributing the vessels (see our discussion under the heading "Rejection A" above). The Examiner has provided no convincing evidence that Petrick discloses, much less claims, such a facility.

Therefore, we cannot say that the Examiner has established that Petrick is claiming the same invention or an obvious variant of the diagnostic specimen system of Appellants' claim 1. The Examiner has failed to establish error in Appellants' evidence swearing behind Petrick. Therefore, we do not sustain the rejection of claims 1-4, 6, 7, 9-12, 14, 15, 40, and 41.

Claim 38

Claim 38 does not require a plurality of collection vessels at different facilities much less any vessels at a distribution facility. There is no dispute that Petrick's claim 7 recites directly adhering the wireless identification device to the specimen container and including a tamper-indicating seal (Petrick, claim 7; Br. 31). Therefore, we cannot say that Appellants have identified an error in the Examiner's rejection of claim 38 as anticipated by Petrick or the Examiner's determination that the Bowman and Lewis Declarations cannot be used to swear behind Petrick's filing date.

While we do not sustain the rejection of claims 1-4, 6, 7, 9-12, 14, 15, 40, and 41, we sustain the rejection of claim 38.

PROCESS CLAIMS

Claims 19 and 21 are directed to a method of recording information and rejected as anticipated by Petrick. These claims require a step of providing a plurality of specimen vessels, each having a wireless electronic memory tag directly attached thereto, at a vessel distribution facility and distributing them to specimen collection facilities. The Examiner does not point to any claim in Petrick reciting providing a plurality of vessels with the required tags at a vessel distribution facility and distributing them as required by claims 19 and 21.

We do not sustain the rejection of claims 19 and 21 over Petrick.

REJECTION D

The Examiner also rejects claims 1, 6, 7, 9, 14, 15, 19, 21, 40, and 41 under 35 U.S.C. § 102(b) as anticipated by Berney.

Claims 1 and 9 require a plurality of specimen collection vessels with electronic tags with some members of this plurality located at a vessel distribution facility, other members being located at a specimen collection facility, and further members being located at a specimen testing laboratory facility, and additional members being transported between the facilities (*see* Claims 1 and 9). Claim 19 requires that the electronically tagged collection vessels be distributed between a vessel distribution facility and a specimen collection facility and transported or distributed between these facilities (*see* Claim 19).

Berney describes a device including a support 3, on which is mounted an electronic label 4 (Berney, col. 1, ll. 61-65; Fig. 1). A test tube containing a sample to be analyzed is placed into the support 3 as shown in Figure 3 (Berney, col. 2, ll. 23-25). The Examiner has not established that Berney describes a plurality of supported test tubes (specimen collection vessels) with some members located at a vessel distribution facility, other members located at a specimen collection facility, and further members located at a specimen testing laboratory as required by claims 1 and 9 or the method of distributing recited in claim 19. Rather, a preponderance of the evidence supports Appellants' argument that Berney's devices are only located at the laboratory where the testing takes place (Br. 44).

We do not sustain the rejection of claims 1, 6, 7, 9, 14, 15, 19, 21, 40, and 41 under 35 U.S.C. § 102(b) as anticipated by Berney.

REJECTIONS E-H, J, AND K

Rejections E-H, J, and K rely upon Petrick and/or Berney in the same capacity as discussed above (*see* Rejections C and D). All of these

rejections contain the errors discussed above. Therefore, for the reasons we have already expressed, we do not sustain these rejections.

REJECTION I

The Examiner rejects claim 38 under 35 U.S.C. § 103(a) over Berney in view of Bowman. This rejection does not contain the error discussed above in reference to Rejection D. Claim 38 does not require a plurality of specimen collection vessels located at various facilities. Claim 38 is directed to a toxicology specimen system comprising a collection vessel, a tamper-indicating seal, and a wireless electronic memory tag directly attached to the vessel.

The Examiner acknowledges that Berney does not disclose the required tamper-indicating seal, but relies upon Bowman as evidence that it would have been obvious to place such a seal on Berney's vessel "so that any attempted tampering with the specimen will be indicated by at least a partial destruction of the seal" (Ans. 12, quoting Bowman, col. 1, lines 7-8).

Appellants contend that the references would not have suggested the addition of a seal to the test tubes of Berney (Br. 53-54).

Berney discloses a test tube having a cap 2 of the kind used for blood analysis in a laboratory (Berney, col. 1, ll. 61-62). While Appellants argue that Berney is not concerned with transporting the vessels from a collection facility to a laboratory (Br. 53), Appellants' own Specification indicates that, in fact, this was a conventional method of delivering a blood sample to a laboratory (Spec. 1:21-22). Normally, the sample is collected in a doctor's office, clinic, or hospital and transported to a separate laboratory for the analysis (*id.*). We cannot, therefore, agree with Appellants' statement that

there is no risk of tampering that needs evidencing on that basis (Br. 53). Moreover, there no evidence that there is no risk of tampering within the analysis laboratory itself.

Appellants also state that Berney's test tubes are provided with caps 2 "that can be removed to permit access to a blood specimen." But the portions of Berney cited, column 1, line 62 and Figure 1, do not provide any evidence that cap removal is necessary or even desirable for analysis of the blood. Moreover, even if it were necessary to remove the cap for analysis, the seal would have served an important purpose of preventing tampering during transportation. Thus, at the time of analysis it is irrelevant whether the cap is removed and the seal is broken to access the sample. Therefore, we cannot agree that there is any convincing evidence indicating that adding a seal would impede specimen analysis as argued by Appellants (Br. 53-54).

On the other hand, Bowman indicates that it can be important to make sure that blood samples are not tampered with, and that tamper-indicating seals were one way to tamper-proof a specimen vessel (Bowman, col. 1, ll. 29-36).

A preponderance of the evidence supports the Examiner's obviousness conclusion. Therefore, we sustain the rejection of claim 38 as obvious over Berney in view of Bowman.

REJECTION K

The Examiner further rejects claims 1-4, 6, 7, 9-12, 14, 15, 19, 21, 38, 40, 41, and 45-49 under 35 U.S.C. § 103(a) as obvious over Stevens in view of Moore (Ans. 15-16). The Examiner finds that Stevens describes a plurality of collection containers with barcoded labels and Moore teaches

labels including both a barcode and a RFID chip for carrying complete manifests and packing lists as well as a full range of other information, some of which can be used for tracking (Ans. 16).

Appellants contend that the Examiner has engaged in hindsight reasoning (Br. 56-58).

A preponderance of the evidence supports the Examiner's obviousness conclusion.

Stevens discloses a labeled vessel for collecting fluid samples from patients (Stevens, ¶ [0001]). The label includes a machine readable barcode with a removable portion that can be affixed to test request forms and the like (Stevens, ¶ [0013]). The label is applied to a container by an automated manufacturing process so that the label is pre-attached to the container prior to being used by a medical facility (specimen collection facility) and/or prior to being transported to a testing facility (specimen testing laboratory facility) (Stevens, ¶ [0030]).

Moore discusses various types of labels containing electronic information carriers such as barcodes, two-dimensional (2D) symbols, and RFID smart labels used to track shipments (Moore, p. 1). Moore indicates that barcodes, two-dimensional (2D) symbols, and RFID smart labels may be used on the same label, and RFID has long been viewed as the most significant alternative to barcode technology (Moore, pp. 1-2). Moore discusses smart labels as having an inexpensive RFID chip embedded in a self-adhesive label that, typically, has at least one barcode on it (Moore, p. 3, ¶ 1). According to Moore, RFID smart labels have the potential to carry

complete electronic manifests and packing lists as well as a full range of other information, some of which can be used for tracking (Moore, p. 3, ¶ 2).

A preponderance of the evidence supports the Examiner's conclusion of obviousness. Moore provides evidence that smart labels including both RFID tags and barcodes were known for use to provide tracking information, electronic manifests, and packing lists on articles being transported from place to place. Stevens transports the specimen vessels between an automated manufacturing process site, medical facilities, and a testing facility. Using the smart label of Moore for its known information carrying and tracking abilities on Stevens' vessels would have been merely the use a known label for its known function to yield predictable results. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

We sustain the rejection of claims 1-4, 6, 7, 9-12, 14, 15, 19, 21, 38, 40, 41, and 45-49 under 35 U.S.C. § 103(a) as obvious over Stevens in view of Moore.

REJECTION F

To reject claims 5, 8, 13, and 18, the Examiner adds Leuenberger to the combination of Stevens and Moore. Appellants do not present any arguments directed to this rejection. Therefore, Appellants have not identified an error and we sustain the rejection for the reasons explained in reference to Rejection E.

REJECTION G

To reject claims 16, 17, 20, and 42-44, the Examiner adds Hoffman or Fukuzaki to the combination of Stevens and Moore.

While Appellants discuss several groups of claims under separate headings, for the majority of the groups, Appellants merely point out the differences between what each of the references teaches and what is claimed without adequately identifying an error in the proposed obviousness rationale advanced by the Examiner (Br. 58-59). Appellants' statements do not amount to separate arguments supporting the separate patentability of claims under 37 CFR § 41.37(c)(1)(vii). Rule 41.37 requires more substantive arguments in an appeal brief than a mere recitation of the claim elements and an assertion that the corresponding elements were not found in the prior art. *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011). Moreover, even if the statements could be said to be separate arguments, the statements do not sufficiently identify an error in the Examiner's rejection, which is based upon what one of ordinary skill in the art would have considered obvious given the combination of the teachings of the references as a whole.

We further do not find Appellants' argument with regard to claim 44 persuasive. Appellants argue that "Stevens in view of Moore is so different that regardless of what Hoffman or Fukuzaki may say about recording signatures, it would not have been obvious to do so in the context of Stevens in view of Moore to perform the method of claim 44." (Br. 60.) This argument does not sufficiently take into account that the label of Stevens in view of Moore is designed to encode information and Hoffman and Fukuzaki disclose a type of electronic information. Nor does Appellants'

argument address the Examiner's finding that the signature of "the person under concern" is conventional in all diagnostic procedures (Ans. 18).

We cannot say that Appellants have identified an error in the Examiner's rejection of claims 16, 17, 20, and 42-44 over Stevens and Moore further in view of Hoffman or Fukuzaki. Therefore, we sustain this rejection.

CONCLUSION

We sustain the Examiner's rejection of claims 1-17, 40-42, and 44-49 under 35 U.S.C. § 112 ¶ 1 as failing to comply with the written description requirement.

We sustain the rejection of claims 1-21, 38, and 40-49 under 35 U.S.C. § 112, ¶ 2 as indefinite.

We sustain the rejection of claim 38 under 35 U.S.C. § 102(e) as anticipated by Petrick, but do not sustain the rejection of claims 1-4, 6, 7, 9-12, 14, 15, 19, 21, 40, and 41 on that ground.

We do not sustain the rejection of claims 1, 6, 7, 9, 14, 15, 19, 21, 40, and 41 under 35 U.S.C. § 102(b) as anticipated by Berney.

We do not sustain the rejection of claims 5, 8, 13, and 18 under 35 U.S.C. § 103(a) over Petrick or Berney in view of Leuenberger.

We do not sustain the rejection of 16, 17, 20, and 42-44 under 35 U.S.C. §103(a) over Petrick or Berney in view of Hoffman or Fukuzaki.

We do not sustain the rejection of claims 2 and 10 under 35 U.S.C. § 103(a) over Berney in view of RD 421048.

We do not sustain the rejection of claims 3, 4, 11, and 12 under 35 U.S.C. § 103(a) over Berney in view of Stevens.

We sustain the rejection of claim 38 under 35 U.S.C. § 103(a) over Berney in view of Bowman.

We do not sustain the rejection of claim 8 under 35 U.S.C. § 103(a) over Berney in view of RD 421048, Stevens, and Leuenberger.

We do not sustain the rejection of claim 17 under 35 U.S.C. § 103(a) over Berney in view of Stevens, and Leuenberger, and further in view of Hoffman or Fukuzaki.

We sustain the rejection of claims 1-4, 6, 7, 9-12, 14, 15, 19, 21, 38, 40, 41, and 45-49 under 35 U.S.C. § 103(a) as obvious over Stevens in view of Moore.

We sustain the rejection of claims 5, 8, 13, and 18 under 35 U.S.C. § 103(a) as obvious over Stevens and Moore further in view of Leuenberger.

We sustain the rejection of claims 16, 17, 20, and 42-44 under 35 U.S.C. § 103(a) as obvious over Stevens and Moore further in view of Hoffman or Fukuzaki.

DECISION

The Examiner's decision is affirmed.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED

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